IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3162 OF 2004

M/s. Milton's Private Limited ...Petitioner

Versus

The New India Assurance Company Ltd. ... Respondent

Mr. J.P. Sen instructed by Mr. Arvind G. Shah for the petitioner.
Mr. Rahul Narvekar instructed by M/s. Udwadia & Udeshi for the respondent.

CORAM: **DALVEER BHANDARI, C.J.** &
DR. D.Y. CHANDRACHUD, J.

DATE: **DECEMBER 14, 2004**.

P.C.

The petitioner, in this petition, has prayed that letter of repudiation dated 24th February, 2004, passed by the respondent be quashed and set aside. The petitioner has also prayed that the respondent be directed to pay the claim of Rs.12,27,00,000/- with interest at the rate of 18% per annum from 28th April, 2002 till the date of payment.

2. The New India Assurance Company Limited vide letter dated 24th February, 2004, mentioned that they had come to reasonable belief after examining the Survey Report, the relevant Forensic Report and other material on record that the alleged fire was not 'accidental'.

According to the respondent, the petitioner was obliged to furnish such information as regards the origin and cause of the loss and/or the circumstances under which the loss or damages occurred, but the petitioner Company has wilfully failed and neglected to do so by stating that “fire which happened due to reasons not known.” Further, the fire was suspected to have been caused on account of alleged petroleum product found at the seat of the fire which had neither been declared at the time of obtaining the policy nor the storage of the same was ever intimated to them. Since the respondent is suspecting the fire, whether accidental or not, it becomes a case of highly disputed questions of fact.

3. It is not possible to determine the disputed questions of fact in our extraordinary jurisdiction under Article 226 of the Constitution. In our opinion, if the petitioner is aggrieved by this letter, the proper remedy for the petitioner would be to prefer a civil suit before a Court of competent jurisdiction. This petition being devoid of any merit is accordingly dismissed.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.